

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
CENTRAL SMELT CO.,

Appellant,

vs.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 325

FINDINGS OF FACT,
CONCLUSION AND ORDER

This matter, the appeal of a \$50.00 civil penalty for an alleged open burning violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer) in the conference room of respondent's Vancouver, Washington office at 2:00 p.m., June 22, 1973.

Appellant appeared through its president, Knute Soleim; respondent through its counsel, James D. Ladley. Thomas E. Archer, Kelso court reporter, reported the proceeding.

Witnesses were sworn and testified. Eight exhibits were admitted.

1 From testimony heard, exhibits examined and transcript reviewed, the
2 Pollution Control Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 During the noon hour on February 27, 1973, on property owned and
6 controlled by appellant at the foot of Catlin Street, West Kelso,
7 Cowlitz County, an outdoor fire of a large collection of cardboard
8 containers was ignited and burned with a heavy pall of smoke. The
9 cardboard containers had been stacked in an open area awaiting a garbage
10 pickup. The president of appellant's firm, Knute Soleim, was absent at
11 the time, having gone home to lunch. Temporary help, hired for the smelt
12 run in process at the time on the nearby Cowlitz River, apparently lit
13 the fire. One smelt, affixed to a stick, was placed near the fire at the
14 time that an air quality control officer on respondent's staff observed
15 the fire and smoke plume. He served appellant with Notice of Violation
16 CS 0829, citing Section 4.01 of respondent's Regulation I. Subsequently,
17 and in connection therewith, respondent served appellant with the Notice
18 of a \$50.00 civil penalty. That penalty is the subject of this appeal.

19 II.

20 Section 4.01 of respondent's Regulation I makes it unlawful to allow
21 an open fire. Section 4.01(a)(1) permits open fires for the cooking of
22 food for human consumption "provided no nuisance is created." Section 4.01
23 (d) states that it shall be prima facie evidence that the person who owns
24 or controls property on which a prohibited open fire occurs has caused or
25 allowed said fire.

26 III.

27 Since the incident on February 27, 1973, appellant no longer stores

FINDINGS OF FACT,

CONCLUSION AND ORDER

1 its waste cardboard containers in the open. Instead, they are kept in a
2 covered area closely associated with appellant's office.

3 From these Findings, the Pollution Control Hearings Board comes to
4 this

5 CONCLUSION

6 Appellant was in violation of Section 4.01 of respondent's
7 Regulation I as cited in Notice of Violation CS 0829. The presence of
8 one smelt on a stick hardly can be justification for the nuisance-causing
9 smoke plume which arose from the fire started on appellant's property.

10 Appellant, which did not sanction the fire, has taken steps to store
11 its waste cardboard awaiting garbage pickup in an area less accessible to
12 the public in an effort to minimize the possibility of a duplication of
13 this violation.

14 THEREFORE, the Pollution Control Hearings Board issues this

15 ORDER

16 The appeal is denied, but the \$50.00 penalty is suspended pending no
17 further violation of Section 4.01 of respondent's Regulation I for a
18 period of six months from the date of this Order.

19 DONE at Lacey, Washington this 11th day of July, 1973.

20 POLLUTION CONTROL HEARINGS BOARD

21 Walt Woodward
22 WALT WOODWARD, Chairman

23 W. A. Gissberg
24 W. A. GISSBERG, Member

25 James T. Sheehy
26 JAMES T. SHEEHY, Member

27 FINDINGS OF FACT,
CONCLUSION AND ORDER